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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,053	02/02/2005	Stanley George Bonney	P33090 USW	7571
23347	7590	01/15/2010		
GLAXOSMITHKLINE CORPORATE INTELLECTUAL PROPERTY, MAI B482 FIVE MOORE DR., PO BOX 13398 RESEARCH TRIANGLE PARK, NC 27709-3398			EXAMINER JACYNA, J CASIMER	
			ART UNIT 3754	PAPER NUMBER
			NOTIFICATION DATE 01/15/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/523,053	Applicant(s) BONNEY, STANLEY GEORGE	
	Examiner J. Casimer Jacyna	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,7,8,10-16,18-29,32-34,36,45-47 and 52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,7,8,10-16,18-29,32-34,36,45-47 and 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>121709</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 45 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 45 is written as a dependent claim, but all parent claims have been cancelled.

4. Claims 1, 2, 5, 7, 8, 10-16, 18-29, 32-34, 36, 45-47 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Katz German DE 100 17 438. Figure 5 of Katz discloses a dispenser including a storage chamber 2, an outlet orifice 35 with a conical shape that is a typical shape for a spray head wherein the orifice is "spray head shaped" (note that a spray head is not claimed, only an element that has a shape similar to a spray head is claimed) as claimed and is of a size that could be inserted into a user's nostril if a user desired to insert the orifice into a nostril (note that nostril spray is not claimed, nor is the function of spraying into a nostril positively claimed, only a size and shape smaller than a nostril is claimed), a dispensing mechanism that includes a metering chamber 7, a bleed arrangement that includes the channel structure 22, a plunger with a first wall head 3 that moves toward the second wall defined by the interior surface of 35 and a spring biased valve mechanism 33 or 37 as seen in figures 14-17 that will remain closed to allow the suction refilling of chamber 7 but will open at an opening pressure threshold as claimed and as disclosed on page 3 of the translation

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submitted 12/17/2009. In regard to the functional language regarding three positions and two volumetric states, Katz has the same claimed shape and is capable of being used in three different positions with two different volumes as claimed. Whether or not the dispenser of Katz is used in this fashion depends on a future act of use and not on any claimed structural difference. In regard to the bleed arrangement, Katz discloses a dispenser with the same claimed piston in a piston chamber with a side inlet wherein because the piston moves past the side inlet in the same manner as disclosed it must inherently perform the same function of bleeding material back into the storage chamber. In regard to claim 16, spring 19 as shown in figure 9 is a flap structure of the valve mechanism that overlies the outlet orifice as claimed.

5. Claims 1, 2, 5, 7, 8, 10-16, 18-29, 32-34, 36, 45-47 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katz German DE 100 17 438 in view of Clay 6,413,499. Katz discloses a dispenser substantially as claimed but does not disclose the outlet to be a spray head sized for insertion into a nostril. However, Clay teaches another piston pump dispenser that also dispenses a gel which is of similar consistency to a cream having the gel or cream sprayed into a nostril and being sized and shaped for insertion into a nostril as disclosed on column 12, lines 32-44 and shown in figures 4B and 7 for the purpose of dispensing a gel or cream into a user's nasal cavities. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispenser of DE/438 with a spray head sized for insertion into a nostril as, for example, taught by Clay in order to dispense a gel or cream into a user's nasal cavities.

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6. Claims 1, 2, 5, 7, 8, 10-16, 18-29, 32-34, 36, 45-47 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katz German DE 100 17 438 in view of Alfonso et al. 6,017,963. Katz discloses a cream dispenser substantially as claimed but does not disclose the outlet nozzle 35 to be sized for insertion into a nostril. However, Alfonso teaches another pump dispenser on column 5, lines 11-14 that also dispenses a cream as disclosed on column 4, lines 49-51, that is used as a nasal cream for dispensing into the nostril. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispenser of DE/438 with a nasal cream as, for example, taught by Alfonso in order to increase the versatility and usefulness of the dispenser and also to size the outlet nozzle 35 to fit into a nostril to enable the nasal cream to be dispensed into a user's nasal cavities.

7. Applicant's arguments filed 12/17/2009 have been fully considered but they are not persuasive. Applicant is essentially contending the Katz does not disclose a method of use and not a difference in structure. There is no claimed structure that differentiates between the three separate positions. When a user depresses the actuator 4, when the plunger reaches the bleed channel 22 it is automatically in the second position as claimed and when the actuator is further depressed and passes 22 it automatically compresses the liquid in 7 to raise the pressure to overcome the spring bias of the valve in 35 to initiate dispensing.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/
Primary Examiner, Art Unit 3754